

SERVED: February 26, 1993

NTSB Order No. EA-3807

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 12th day of February, 1993

_____)	
JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11364
v.)	
)	
ROBERT E. McCARTNEY,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty issued on January 16, 1991, following an evidentiary hearing.¹ That decision modified an August 16, 1990 order of the Administrator² and

¹The initial decision, an excerpt from the transcript, is attached.

²The Administrator's order imposed a 30 day suspension of the respondent's certificate for alleged violations of FAR sections 135.21(a) and 91.9, but the law judge dismissed the

sustained a 15 day suspension of respondent's Airline Transport Pilot Certificate for a violation of section 91.9 of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 91.³ The Board now affirms the initial decision.⁴

The Administrator's Order of Suspension alleged, in pertinent part, the following facts and circumstances concerning the respondent:

1. You are now, and at all times herein mentioned were, the holder of Airline Transport Pilot Certificate No. 559470448, with airplane multi-engine land (ATPC) and airplane single-engine land (commercial) ratings.

2. On February 18, 1990, you operated Civil Aircraft N1010Z, a Swearingen Metroliner Model SA-226TC, as pilot-in-command with passengers on board, as California Air Shuttle (CAS) Flight 702 from the Oxnard Municipal Airport, Oxnard, California to Las Vegas, Nevada. CAS is a certificated air carrier under Part 135 of the Federal Aviation Regulations and Special FAR No. 38, as amended, and operates various U.S. Civil aircraft in scheduled air transportation.

3. Prior to the departure of CAS Flight 702 from the Oxnard Airport, the two male passengers were being boarded onto Aircraft N1010Z, entering the passenger cabin via a stairway positioned to the left side of the fuselage, and in front of the No. 1 left engine.

(..continued)

135.21(a) violation for lack of evidence to show that the checklist was not followed and reduced the suspension. The Administrator did not appeal the dismissal of the charge or the reduction in sanction.

³FAR section 91.9, as in effect at the relevant time, provided as follows:

"§91.9 **Careless or reckless operation.**

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

⁴The Administrator has filed a reply opposing the appeal.

4. The CAS Metro II Check List, at Engine Start (Right & Left), provides, by a Challenge and Response call-out, that the cabin and cargo door be secured and lights out prior to starting either engine.

5. The use of the CAS Metro II Check List is mandatory.

6. Prior to departure of CAS 702, at about 1949 hours PST, you operated Aircraft N1010Z in such a manner that the No. 1 left engine was started while the passengers were still being boarded and a CAS Passenger Service Agent was standing in front of the left engine.

7. The propeller of the left engine struck the Passenger Service Agent on the head.

Respondent focuses his appeal on the wording of the Administrator's complaint arguing that the evidence showed that the left engine was not, in fact, "started," and, therefore, the Administrator did not meet his burden of proof. We disagree. The law judge found that respondent as pilot-in-command initiated an engine start sequence that caused the propeller to turn and strike the Passenger Service Agent.⁵ Like the law judge, we read the complaint to reach any conduct by the respondent that prematurely set the propeller in motion.

Before concluding that the respondent's actions in the cockpit did in fact cause the propeller to turn and strike the ramp agent, the law judge reviewed the conflicting testimony of the parties' witnesses. He found the testimony of the

⁵The respondent's explanation for the rotation of the propeller, that he may have inadvertently toggled the starter test switch rather than initiating an actual engine start, would not exculpate him. An inadvertent toggling of the starter test switch, while it would not initiate the starting of the engine, would be careless and warrant a sanction if performed while passengers were boarding.

Administrator's witnesses to be more credible than that of the respondent's witnesses. The law judge considered among other things the fact that the witnesses for the Administrator had nothing to gain from the result of the proceeding, that their testimony was congruous, and that at least two of the eyewitnesses, who were lay persons, accurately described the sound of the normal start sequence. As the testimony of the Administrator's witnesses was clearly sufficient to support the section 91.9 charge, and the respondent has not identified any valid reason to disturb the law judge's credibility assessments, the initial decision will be affirmed.⁶ We adopt as our own his findings and conclusions.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied;
2. The Administrator's order, as modified by the initial decision, is affirmed; and
3. The 15 day suspension of respondent's Airline Transport Pilot Certificate shall begin 30 days after the date of service of this order.⁷

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁶See *Administrator v. Gurley*, NTSB Order No. EA-3218 (1990).

⁷For the purposes of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).